

Senate Bill No. 786

Passed the Senate May 17, 1999

Secretary of the Senate

Passed the Assembly August 19, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 668 of, and to add Section 668.5 to, the Penal Code and to amend Section 6600 of the Welfare and Institutions Code, relating to punishment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, Schiff. Punishment.

Existing law provides that every person convicted in any other state, government, country, or jurisdiction of an offense that is punishable in this state by imprisonment in state prison is punishable as if the prior conviction had occurred in this state when convicted of a subsequent crime in this state. Existing law specifies that the application of this provision includes, but is not limited to, all statutes that provide for enhancements for prior convictions and prior prison terms.

This bill additionally would include in this application a term of imprisonment based upon a prior conviction or prior prison term and further require that an offense specified as a prior felony conviction by reference to a specific code section include any prior felony conviction under any predecessor statute of that specified offense that includes all of the elements of that specified offense. This bill also would specify that application of the latter provision includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based upon a prior conviction or a prior prison term.

This bill would make a conforming change.

The bill also would provide that it is intended to be declaratory of existing law as established by the holding set forth in *People v. Butler* (1998) 68 Cal. App. 4th 421.

This bill would declare that it is to take effect immediately as an urgency statute.



The people of the State of California do enact as follows:

SECTION 1. Section 668 of the Penal Code is amended to read:

668. Every person who has been convicted in any other state, government, country, or jurisdiction of an offense for which, if committed within this state, that person could have been punished under the laws of this state by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state. The application of this section includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

SEC. 2. Section 668.5 is added to the Penal Code, to read:

668.5. An offense specified as a prior felony conviction by reference to a specific code section shall include any prior felony conviction under any predecessor statute of that specified offense that includes all of the elements of that specified offense. The application of this section includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based on a prior conviction or a prior prison term.

SEC. 3. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction for an offense under a



predecessor statute that includes all of the elements of an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another jurisdiction for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral



copulation in violation of Section 286 or 288a of the Penal Code.

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.

(e) “Predatory” means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

SEC. 4. This act is intended to be declaratory of existing law as contained in *People v. Butler* (1998) 68 Cal.App.4th 421, at pages 435-441.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the qualification of prior convictions under predecessor statutes at the earliest possible time so as to avoid confusion regarding their use, it is necessary for this act to take effect immediately.

Approved _____, 1999

Governor

